# Occupational Safety in the Marine Cargo Handling Industry

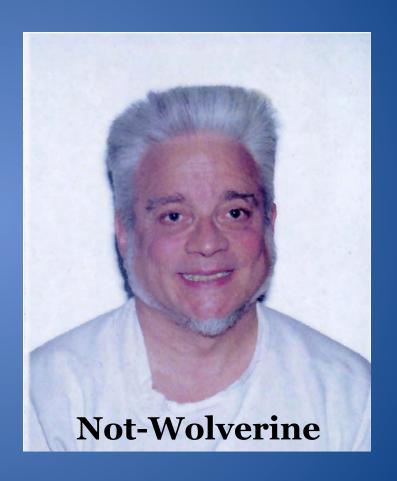


The Fundamental Parts of the Equation and The Current Experience

### How The Issues Are Presented

- Visually [Through PowerPoint Slides]
- Oral Narrative
   [To Better Understand The Stakeholders & The Relevant Laws and Regulations]
- Real Life Experience

  [Fatal Accidents That Have
  Occurred at US Ports In CYs
  2014/2015]



## Appreciating The Financials

A Marine Terminal Operator's Hierarchy of Recurring Costs \*

- 1). Payroll (Labor)
- 2). Property Rental Fees
- 3). Insurance (General Liability/Worker's Compensation)

<sup>\*</sup> Higher cost equipment, i.e., container cranes, RTGs, etc.., are infrastructure investments often expensed by the local port authority.

# State Workers' Compensation Laws

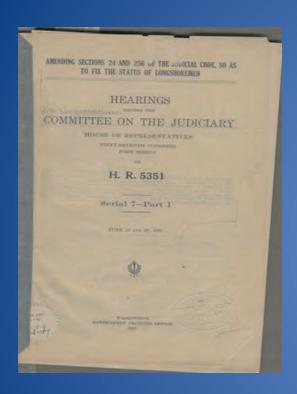
1855: Georgia; Alabama – Employer Liability Acts - Permitted Employees to File Suit and then Prove Employer Negligence/Omissions

1902: Maryland – First Neutral, No-Fault, Sole Remedy Worker's Compensation Law

1949: All States Had Similar Laws, Basing Compensation Payments on the SAWW (State Average Weekly Wage)

2015/2016: Nat'l Average Weekly Wage: \$703.00

### The Jensen Era





- Southern Pacific v. Jensen (1917)
- Knickerbocker v. Stewart (1920)
- Washington v.
   Dawson (1924)

Memorializing an internecine turf fight between the U.S. Congress and the Supreme Court, in determining the method (or indeed the existence) of worker's compensation for injuries sustained on the navigable waters of the U.S.

### U.S. Constitution

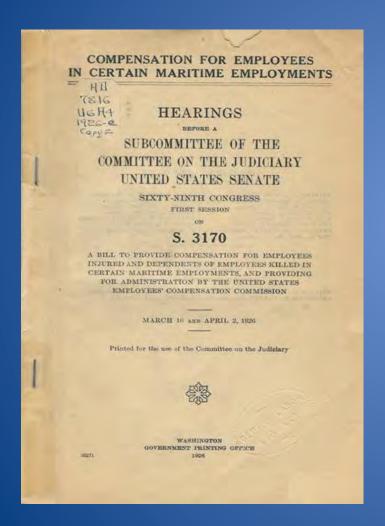
Article III.

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Section. 2.

The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;--to all Cases affecting Ambassadors, other public Ministers and Consuls;--to all Cases of admiralty and maritime Jurisdiction;--to Controversies to which the United States shall be a Party;--to Controversies between two or more States; ....

## LHWCA of 1927



 Creates a Federal scheme for the payment of compensation to marine cargo handling and shipyard workers injured "on the navigable waters of the United States.

Validated by the Supreme Court in:

- T. Smith & Son v. Taylor (1928)
- Minnie v. Port Huron Terminals (1935)

# Compensation Rates (LHWCA) 10 Year Lookback

<u>Point In Time</u>	NAWW	MAX	MIN	% Incr
10/01/2015- 09/30/2016	\$703.00	\$1,406.00	\$351.50	2.10%
10/01/2014- 09/30/2015	\$688.51	\$1,377.02	\$344.26	2.25%
10/01/2013 - 09/30/2014	\$673.34	\$1,346.68	\$336.67	1.62%
10/01/2012 - 09/30/2013	\$662.59	<b>\$1,325.1</b> 8	\$331.30	2.31%
10/01/2011 - 09/30/2012	\$647.60	\$1,295.20	\$323.80	3.05%
10/01/2010 - 09/30/2011	\$628.42	\$1,256.84	\$314.21	2.63%
10/01/2009 - 09/30/2010	\$612.33	\$1,224.66	\$306.17	2.00%
10/01/2008 - 09/30/2009	\$600.31	\$1,200.62	\$300.16	3.47%
10/01/2007 - 09/30/2008	\$580.18	\$1,160.36	\$290.09	4.12%
10/01/2006 - 09/30/2007	\$557.22	\$1,114.44	\$278.61	3.80%
10/01/2005 - 09/30/2006	\$536.82	\$1,073.64	\$268.41	2.53%

Source: U.S. Dept of Labor ~ OWCP

### (1951) Organized Labor Initiates Attempts to Legislatively"Perfect" the LHWCA

### [COMMITTEE PRINT]

82D CONGRESS ) HOUSE OF REPRESENTATIVES (

### SAFETY IN LONGSHORE AND HARBOR WORK

The subcommittee of the Committee on Education and Labor, to which was referred the bill (H. R. 5796) to amend section 41 of the Longshoremen's and Harbor Workers' Compensation Act of 1927, as amended, to provide a system of safety rules, regulations, and safetinspection and training, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill be considered favorably by the full Committee on Educa-tion and Labor and be reported to the House of Representatives for

The subcommittee amendment is as follows:

On page 5, line 8 of the bill, strike out the comma after the word "amended" and insert in lieu thereof a period and strike out all of

Hearings on H. R. 5796 were held on March 19, 20, and April 3, 1952, by the subcommittee. The subcommittee held hearings on H. R. 4032 on June 5, 11, 12, 19, 20, 22, and 26, 1951. Members of the subcommittee observed the longshoring operations at Cleveland, Ohio, Chicago, Ill., and in the Boston, Mass., and city of New York harbors. As a result of the subcommittee's consideration of H. R. 4032, certain amendments thereto were adopted, and the chairman of the subcommittee was instructed to introduce a new bill which was designated H. R. 5796.

### HISTORICAL BACKGROUND

The Longshoremen's and Harbor Workers' Compensation Act was passed by Congress on March 4, 1927, to provide compensation for disability or death resulting from injury to employees, other than officers and crew members of vessels, who are injured while employed on the navigable waters of the United States and who are not covered by the compensation laws of any State. Upon its enactment, the bill was administered by the United States Employees Compensation Commission. On June 16, 1946, the Commission was abolished and its functions transferred to the Federal Security Agency. Effective May 24, 1950, the functions previously transferred to the Federal Security Agency were transferred by Reorganization Plan No. 19 to the United States Department of Labor. This transfer was made to provide for better administrative efficiency. The functions and personnel relating to safety were placed under the Director of the Bureau of Labor Standards and the existing safety services of the Bureau have been utilized to bolster accident prevention programs on a voluntary basis in the stevedoring industry. The Director of Employees Compensation administers the compensation features of this law. 98325—52

- ILA/ILWU
- **Boilermakers**
- Steelworkers
- Carpenters
  - > Higher than usual number of explosions in shipyards.
  - Increased trade volumes w/ more cargo gear failures.
  - ➤ Post 1953: Political incentives to reseat a Democratic president

# The Political Landscape U.S. House of Representatives (1955)

### COMMITTEE ON EDUCATION AND LABOR

GRAHAM A. BARDEN, North Carolina, Chairman

AUGUSTINE B. KELLEY, Pennsylvania
ADAM C. POWELL, Jr., New York
JOHN S. WOOD, Georgia
JOHN F. KENNEDY, Massachusetts
WINGATE H. LUCAS, Texas
CLEVELAND M. BAILEY, West Virginia
LEONARD IRVING, Missouri
CARL D. PERKINS, Kentucky
CHARLES R. HOWELL, New Jersey
TOM STEED, Okinhoma
ROY W. WIER, Minnesota
BOYD TACKETT, Arkansas
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SAMUEL K. McCONNELL, Jr., Pennsylvan RALPH W. GWINN, New York WALTER E. BREHM, Ohio WINT SMITH, Kansas CARROLL D. KEARNS, Pennsylvania THRUSTON BALLARD MORTON, Kenter THOMAS H. WERDEL, California HAROLD H. VELDE, Illinois CHARLES E. POTTER, Michigan RICHARD B. VAIL, Illinois E. Y. BERRY, South Dakota

FRED G. HUSSEY, Chief Clerk
JOHN O. GRAHAM, Minority Clerk
JOHN S. FORSYTHE, General Counsel
DAVID N. HENDERSON, Assistant General Counsel
RUSSELL C. DERRICKSON, Investigator

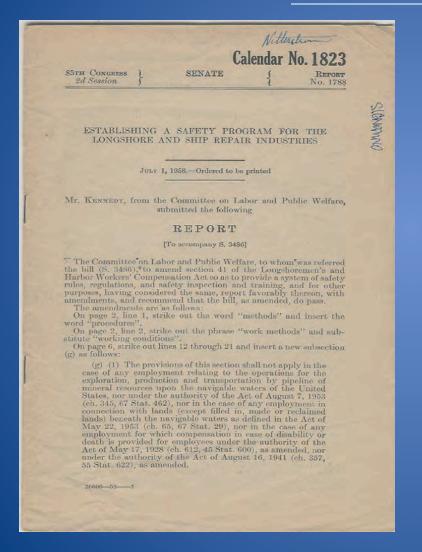
SUBCOMMITTEE ON SAFETY IN LONGSHORE AND HARBOR WORK

JOHN F. KENNEDY, Massachusetts, Chairman

CLEVELAND M. BAILEY, West Virginia

CARROLL D. KEARNS, Pennsylvania

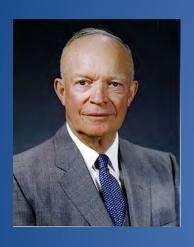
## The 85th Congress (1957-1958)



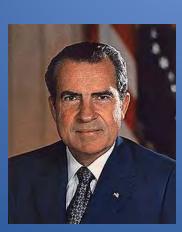
- Sustained organized labor efforts to widen LHWCA coverage and increase safety protection.
- Political impetus now gradually translated into labor support for one prospective Democratic presidential candidate.

### The 1958 LHWCA Amendments

[Public Law 85-742/ The Kennedy Maritime Safety Act]

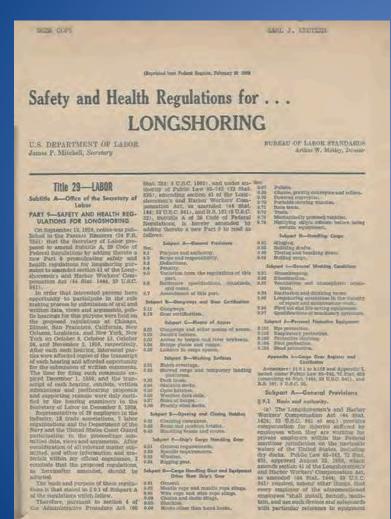






- Political compromise brokered by Senate Majority Leader Lyndon Johnson, with JFK as strongest proponent.
- Resisted by Ike; needed by Richard Nixon to appease Labor in his (1960) bid for Presidency.
- Expanded §41 of LHWCA, to provide for safety standards, enforcement and training.
- Put in the enforcement hands of DOL (LSB).

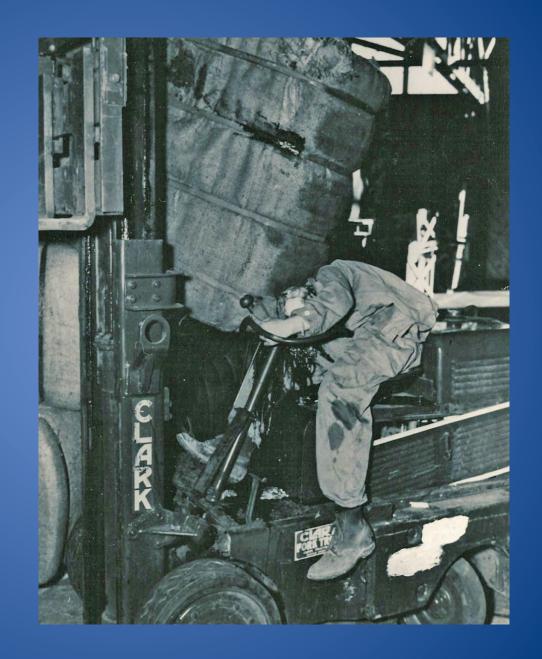
### The 1<sup>st</sup> U.S. Federal Longshoring Industry Safety Regulations



- Published in the FEDERAL REGISTER, February 20, 1960
- Applicability tracked the jurisdiction of enabling legislation (LHWCA), i.e., to work "on the navigable waters"
- Work on terminals therefore, not covered

Other Laborers and Industrial Workers Wanted To Be Protected On The Job, As Well.

To Achieve That Goal, They Must Take Their Message To Congress:



### The Occupational Safety & Health Act of 1970 [Public Law 91-596]



Public Law 91-596 91st Congress, S. 2193 December 29, 1970 As amended by Public Law 101-552, §3101, November 5, 1990

### An Art

To assure safe and healthful working conditions for working men and women; by authorizing enforcement of the standards developed under the Act; by assisting and encouraging the States in their efforts to assure safe and healthful working conditions; by providing for research, information, edu-cation, and training in the field of occupational safety and health; and for

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Occupational Safety and Health Act of 1970."

### CONGRESSIONAL FINDINGS AND PURPOSE

SEC. (2) The Congress finds that personal injuries and illnesses arising out of work situations impose a substantial burden upon, and are a hindrance to, interstate commerce in terms of lost production, wage loss, medical expenses, and disability compensation payments.

(b) The Congress declares it to be its purpose and policy, through the exercise of its powers to regulate commerce among the severa States and with foreign nations and to provide for the general welfare, to assure so far as possible every working man and woman in the Nation safe and healthful working conditions and to preserve our

human resources—
(1) by encouraging employers and employees in their efforts to reduce the number of occupational safety and health hazards at their places of employment, and to stimulate employers and employees to institute new and to perfect existing programs for providing safe and healthful working conditions;

(2) by providing that employers and employees have separate

(2) by providing that employers and employees have separate but dependent responsibilities and rights with respect to achieving safe and healthful working conditions;

(3) by authorizing the Secretary of Labor to set mandatory occupational safety and health standards applicable to businesses affecting interstate commerce, and by creating an Occupational Safety and Health Rayvay Commission for a waiving actional Safety and Health Rayvay Commission for a waiving and the same of the s pational Safety and Health Review Commission for carrying out adjudicatory functions under the Act;

(4) by building upon advances already made through employer and employee initiative for providing safe and healthful working conditions;

(5) by providing for research in the field of occupational safety and health, including the psychological factors involved, and by developing innovative methods, techniques, and approaches for dealing with occupational safety and health prob-

(6) by exploring ways to discover latent diseases, establishing causal connections between diseases and work in environmental conditions, and conducting other research relating to health problems, in recognition of the fact that occupational health standards present problems often different from those involved in occupational safety;

(7) by providing medical criteria which will assure insofar as practicable that no employee will suffer diminished health, functional capacity, or life expectancy as a result of his work experi-

(8) by providing for training programs to increase the number and competence of personnel engaged in the field of occupational safety and health: Signed into law by Richard Nixon, December 29, 1970

- Extended to all workplaces
- Adopted all existing Federal Safety Standards (including the Longshoring safety regulations under LSB care)
- "on the navigable waters" limitations of LHWCA (for safety/health purposes) no longer apply

Occupational Safety and Health Act of

84 STAT. 1590

29 USC 651

### LHWCA Extensions of 1972

### LONGSHOREMEN'S AND HARBOR WORKERS' COMPENSA-TION ACT AMENDMENTS OF 19721'

An Act To provide compensation for disability or death resulting from injury to employees in certain maritime employment, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled.

SEC. 1. This Act may be cited as "Longshoremen's and Harbor Workers' Compensation Act.'

Sec. 2. When used in this Act-

(1) The term "person" means individual, partnership, corporation,

or association.

(2) The term "injury" means accidental injury or death arising out of and in the course of employment, and such occupational disease or infection as arises naturally out of such employment or as naturally or unavoidably results from such accidental injury, and includes a proper property of the could be a such as a such part of the could be accidental injury, and includes

raily or unavoidably results from such accidental injury, and includes an injury caused by the willful act of a third person directed against an employee because of his employment.

(3) The term "employee" means any person engaged in maritime employment, including any longshoreman or other person engaged in longshoring operations, and any harbor-worker including a ship repairman, shipbuilder, and ship-breaker, but such term does not include a marker or marker of the same of the sam clude a master or member of a crew of any vessel, or any person engaged by the master to load or unload or repair any small vessel

engaged by the master to load or unload or repair any small vessel under eighteen tons net.

(4) The term "employer" means an employer any of whose employees are employed in maritime employment, in whole or in part, upon the navigable waters of the United States (including any adjoining pier, wharf, dry dock, terminal, building way, marine railway, or other adjoining area customarily used by an employer in loading, unloading, repairing, or building a vessel).

(5) The term "carrier" means any person or fund authorized under section 32 to insure this Act and includes self-insurers.

(6) The term "deputy commissioner" means the deputy commissioner buying jurisdiction in respect of an injury or death.

sioner having jurisdiction in respect of an injury or death.

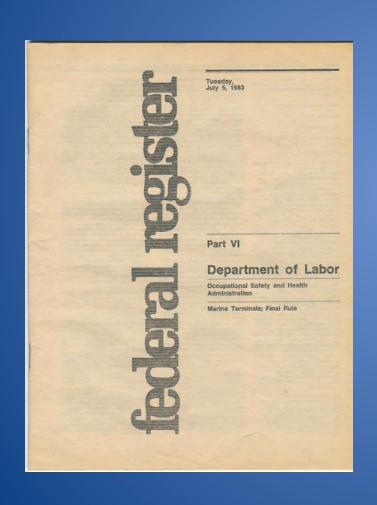
(8) The term "State" includes a Territory and the District of Columbia.

- Brings existing Federal program of compensation ashore
- Now, additionally covers "related employments"
- Substantially boosts amount of compensation paid to recipients

beludes 1972 amendments made by P.L. 92-576 printed in Italic.
The amendments (except section 19(d) of the Act) are effective thirty days after exactment (12:01 a.m., November 26, 1972).

# OSHA Regulations Having Application at Marine Cargo Handling Workplaces

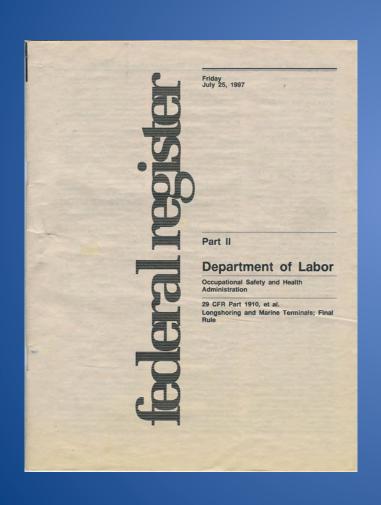
# The Marine Terminals Standard [29 CFR 1917]



Applies From the Terminal's Gate to the Foot of the Gangway

(and everything inbetween)

# Longshoring Standard [29 CFR Part 1918]



Applies From the Foot of the Gangway, to All Cargo Handling Operations Being Conducted Aboard Any Vessel

## Lots Of Regulations...

What's Their Purpose?

## Decrease Human Suffering



### Offset Financial Loss



## Help Prevent Even Greater Financial Loss



## Culture Effective Labor Relations





### Goal No. 1

Accorded The Highest Priority, Taking Precedence Over Any Other Consideration:

### All Workers Get To Go Home In The Same Good Physical Condition They Came To Work In.

No Ocean Carrier, Marine Terminal Operator, Stevedore, Labor Union or Port Authority Can Possibly Hope To Attain the Desired Increased Levels of Efficiency, Productivity or Profit, Without First Attaining Consistent Success In Achieving Goal No. 1.

# Fatal Accidents at US Ports CY 2014 [2<sup>nd</sup> Half]

## 02 July 2014 Miami, FL

Veteran Longshoreman, Charles Thomas, 61 Struck By Reach Stacker While A Pedestrian In Container Yard.

We understand that the reach stacker had just removed an empty container from a chassis, and was moving forward in order to stack the box. The operator did not see Mr. Thomas, who was walking directly in front of the load being carried.

Prior to this accident, container terminals working within the framework of the ILA-USMX Master Contract had experienced nearly two years of fatality-free operations.

# Fatal Accidents at US Ports CY 2015 [Jan to Date]

## 13 March 2015 Anchorage, AK



Charles Tom James, a longshore worker, was killed in an industrial accident at Anchorage today.

Port officials say the man was helping to unload military equipment off a ship and onto a rail car so it could be taken to Fairbanks.

Mr. James was on the rail car when port officials say his head was pinned between two pieces of heavy equipment and he was crushed.

## 21 June 2015 Newport News, VA

Mr. Bernard Carrington, a member of ILA Local Union 1736, was operating an industrial truck down a warehouse ramp when the machine struck the ramp edge and tipped over. Our sources indicate that he was struck by the overhead guard assembly of the industrial truck after he was ejected.



## 07 August 2015 Port Elizabeth, NJ

A Port Elizabeth, NJ dockworker was struck and killed by a container top loader on August 7.

Judy Jones, 49, a member of ILA Local Union 1233, was pronounced dead at the scene by emergency response personnel.

According to reports, Jones' leg was severed in the incident and she bled to death.



## 11 August 2015 Los Angeles, CA

Reports coming to us indicate that a fill-in clerk was driving a terminal pickup truck when he struck a terminal yard tractor. Rochelle Taylor, a member of ILWU Local Union 13 died in hospital of injuries sustained in the crash.



Table 1-1: TOTAL WATERBORNE COMMERCE OF THE U.S., 1974-2013 (in short tons of 2000 pounds)

Year	Total	Foreign	Domestic
1974	1,746,788,544	764,088,905	982,699,639
1975	1,695,034,366	748,707,407	946,326,959
1976	1,835,006,819	855,963,909	979,042,910
1977	1,908,223,619	935,256,813	972,966,800
1978	2,021,349,754	946,057,889	1,075,291,86
1979	2,073,757,628	993,444,963	1,080,312,66
1980	1,998,887,402	921,404,000	1,077,483,40
1981	1,941,558,947	887,102,150	1,054,456,79
1982	1,776,740,579	819,730,983	957,009,59
1983	1,707,661,011	751,140,194	956,520,81
1984	1,836,020,619	803,338,133	1,032,682,48
1985	1,788,434,822	774,323,283	1,014,111,53
1986	1,874,416,280	837,223,503	1,037,192,77
1987	1,967,458,261	890,980,045	1,076,478,21
1988	2,087,993,484	976,220,985	1,111,772,49
1989	2,140,442,372	1,037,910,213	1,102,532,15
1990	2,163,854,373	1,041,555,740	1,122,298,63
1991	2,092,108,462	1,013,557,036	1,078,551,42
1992	2,132,095,154	1,037,466,130	1,094,629,02
1993	2,128,221,188	1,060,041,217	1,068,179,97
1994	2,214,754,086	1,115,742,828	1,099,011,25
1995	2,240,393,059	1,147,357,782	1,093,035,27
1996	2,284,065,249	1,183,386,621	*1,100,678,62
1997	2,333,142,046	1,220,615,132	1,112,526,91
1998	2,339,500,081	1,245,388,049	1,094,112,03
1999	2,322,557,251	1,260,770,656	1,061,786,59
2000	2,424,588,877	1,354,790,984	1,069,804,69
2001	2,393,298,249	1,350,826,076	1,042,472,17
2002	2,340,291,913	1,319,290,931	1,021,000,98
2003	2,394,251,814	1,378,115,758	1,016,136,05
2004	2,551,939,029	1,504,851,381	1,047,087,64
2005	2,527,622,229	1,498,711,806	1,028,910,42
2006	2,588,440,451	1,564,944,286	1,023,496,16
2007	2,563,971,539	1,542,452,190	1,021,519,34
2008	2,477,094,228	1,520,758,974	956,335,25
2009	2,210,751,710	1,353,667,060	857,084,65
2010	2,334,398,600	1,440,937,396	893,461,20
2011	2,367,483,603	1,479,553,348	887,930,25
2012	2,306,810,362	1,421,894,930	884,915,43
2013	2,274,777,616	1,383,625,910	891,151,70

### Total Waterborne Commerce of the U.S. (1974-2013)

In 2013 (latest year w/refined data):

2,274,777,616 Short Tons

Cargo-Related Fatal Accidents Occurring at US Ports (2013):

OS (Source: Bureau of Labor Statistics)

Source: USACE

### The Industry's Performance: Fatal Accidents ~ 2013

Industry <sup>1</sup>	NAICS code <sup>1</sup>	Total fatal injuries (number)	
Other transit and ground passenger transportation	48599	6	
Special needs transportation	485991	4	
Pipeline transportation	486	1	
Pipeline transportation of crude oil	4861	1	
Pipeline transportation of crude oil	48611	1	
Scenic and sightseeing transportation	487	6	
Scenic and sightseeing transportation, land	4871	2	
Scenic and sightseeing transportation, land	48711	2	
Scenic and sightseeing transportation, other	4879	4	
Support activities for transportation	488	69	
Support activities for air transportation	4881	9	
Airport operations	48811	3	
Support activities for rail transportation	4882	3	
Support activities for rail transportation	48821	3	
Support activities for water transportation	4883	15	
Marine cargo handling <	48832	8	
Navigational services to shipping	48833	4	
Support activities for road transportation	4004	27	

Source: US Bureau of Labor Statistics









The Most Recent East and Gulf Coast Labor & Management OSH Initiative, Designed To Advance the Industry's Occupational Safety & Health Experience:

(January ~ 2014)

### ILA~USMX JOINT RESOLUTION ON PORT SAFETY & HEALTH

WHEREAS, the International Longshoremen's Association, AFL--CIO (ILA) and the United States Maritime Alliance, Ltd. (USMX) recognize the necessity of maintaining a proactive approach in relation to occupational safety & health (OSH) issues which must be soberly and responsibly addressed by both parties; and

WHEREAS, the ILA and the USMX have created a Joint Safety Committee (JSC) comprised of three (3) ILA Members, three (3) USMX Members and a Technical Facilitator; to initiate the industry's review of relevant OSM issues: and

WHEREAS, the JSC has made significant progress in creating a greater awareness of OSH issues on an industry wide basis, and will continue to assist labor and management interests throughout the various port districts in successfully approaching OSH issues, to wit:

- III Providing guidance and knowledge to ILA, its Local Unions; USMX and its member Port Associations in relation to a diverse range of OSH issues; utilizing 29 CFR Parts 1917 & 1918 as mandatory OSH rules and supplementing such rules at the discretion of the ISC.
- Reworking closely with the National Maritime Safety
  Association (NMSA). Port Associations, individual employers
  and ILA Local Unions to develop uniform OSH practices,
  policies and procedures to be followed at all Master Contract
  ports. This would include efforts to initiate the development of
  a greater number of industry-wide safety training procedures
  and, to the extent practicable, job specific standards for all
  relevant crafts.
- Requiring every Master Contract port to establish an ILA---Employer joint safety committee (where none presently exist) to review and investigate accidents, to monitor and improve Workplace OSH conditions and to develop and enforce reasonable, effective and compassionate disciplinary procedures.
- Monitoring local port compliance, with all provisions of the Maxter Contract Drug and Alcohol Testing Program, including Random testing provisions & enforcement protocols,
- As necessary, appoint subcommittees that are comprised of knowledgeable and well motivated local ILA and Port Employer Members to supplement the work of the JSC.

NOW, THEREFORE, the undersigned adopt the following amendments to the II.A---USMX Master Contract:

 The Joint Safety Committee (JSC) shall be a standing committee and shall discharge the following responsibilities:

- a). It shall provide OSH:--related guidance and knowledge to USMX and ILA (including local Port Employers and Labor Locals) with the goal of making each and every Master Contract marine cargo handling activity a safe place for all employees to work.
- b), It shall monitor each local port's compliance with the Master Contract Drug and Alcohol Testing Program.
- c). It shall serve as a clearinghouse; in coordination with the National Maritime Association (NMSA) Technical Committee, for reporting and analyzing all serious accidents occurring at Master Contract marine cargo handling operations.
- d). At the request of Management and ILA leadership at any Local Port or District, or on its own initiative, the JSC shall be empowered to investigate any serious accident occurring at Master Contract marine cargo handling operations.
- e), It shall be authorized to appoint subcommittees
  that are comprised of knowledgeable and well--motivated
  local ILA and Port Employer Members to supplement the
  work of the ISC.
- (I). It shall submit quarterly activity reports to ILA and IJSMX leadership, detailing the work of the ISC.
- g). It shall ensure that each Master Contract port establishes a local joint safety committee comprised of equal numbers of subjectively well---versed and well--motivated labor and management representatives. Labor representatives so appointed shall not hold concurrent elective office.

Such local committees shall have the authority to review and investigate accidents, to establish local OSH procedures and policies (in consultation with and approval of the ILA--USMX Joint Safety Committee) and to develop and enforce appropriate disciplinary procedures; provided that such procedures remain consistent with those already agreed upon and in place at the relevant port(s).

Dated: January 15, 2014

International Longshoremen's Association, AFL-CIO

By Barold & Dagatt

United States Mayippine Alliance, Ltd.

David E. Adam, Chairman & CEO

"Be Careful Out There....!"

www.blueoceana.com

